

No. 83677-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,
Respondent,

vs.

ROBERT MAY,
Petitioner.

CLERK
2010 MAY 12 AM 8:03
D. DONALD R. CARPENTER
STATE OF WASHINGTON
CLERK

ANSWER TO MOTION TO STRIKE

PETER S. HOLMES
SEATTLE CITY ATTORNEY

Richard Greene
Assistant City Attorney
WSBA #13496

Attorneys for Respondents

Seattle Law Department
700 Fifth Avenue Suite 5350
P.O. Box 94667
Seattle, Washington 98124-4667
telephone: (206) 684-8538

A. ANSWER TO MOTION TO STRIKE

On the ground that it addresses an issue for which this court did not accept review, petitioner moves to strike the portion of the Supplemental Brief of Respondent that contends that, even if the permanent domestic violence protection order did not recite sufficiently the language of RCW 26.50.060(2), it nevertheless must be obeyed until modified or rescinded by the issuing court. Contrary to petitioner's suggestion, respondent is not raising a new issue. According to the Supreme Court Commissioner's office, the issue presented in this appeal is as follows:

Whether a permanent domestic violence protection order is invalid in failing to include adequate findings for extending the order beyond one year and in failing to state that the person subject to the order could be charged under the Seattle Municipal Code for violating the order.¹

Respondent's argument is that the order is valid – it must be obeyed – even if the findings are not adequate. This argument does not present a new or additional issue, but only another reason for a conclusion that the order is valid. Respondent makes this argument not seeking any form of affirmative relief, but as an alternate ground for affirming the

¹ See

http://www.courts.wa.gov/appellate_trial_courts/supreme/issues/?fa=atc_supreme_issues.display&fileID=notyetset#P28_2137

decision of the Court of Appeals.² Petitioner certainly had the opportunity to address this argument in his supplemental brief. Moreover, even if respondent's argument is construed to be a new "issue," the court certainly has the authority to consider it under RAP 12.1(b).³

The cases cited by petitioner do not support his position. Petitioner's reliance on *State v. Korum*⁴ is misplaced for several reasons. First, that case concerns an additional issue sought to be raised by the appellant, not a response to an issue presented by the respondent. Second, that case held that for an issue to be properly raised, it must be included in the "concise statement of the issues presented for review" under RAP 13.4(c)(5).⁵ That rule concerns the petition for review, which has no application to a supplemental brief of the respondent. Petitioner's reliance on *State v. Gossage*⁶ also is misplaced as that case concerned a respondent's request for affirmative relief, *i.e.*, dismissal of the appeal,

² See *State v. Bobic*, 140 Wn.2d 250, 257-58, 996 P.2d 610 (2000) (respondent entitled to argue any grounds supported by the record to sustain the trial court's decision); *State v. Carter*, 127 Wn.2d 836, 904 P.2d 290 (1995) (Supreme Court can affirm Court of Appeals decision on alternate ground).

³ See *State v. Aho*, 137 Wn.2d 736, 741, 975 P.2d 512 (1999).

⁴ 157 Wn.2d 614, 624-25, 141 P.3d 13 (2006).

⁵ *Korum*, 157 Wn.2d at 624-25.

⁶ 165 Wn.2d 1, 5-6, 195 P.3d 525 (2008).

rather than an alternative ground for affirming the decision of the Court of Appeals.

With respect to any equitable considerations, petitioner admits that this argument was raised in respondent's reply brief in the Court of Appeals and further admits that the Court of Appeals addressed this argument.⁷ Petitioner obviously knew of this issue and simply chose not to address it in his page-limited supplemental brief.⁸ He now seems to want to be relieved from the consequences of his own, presumably calculated, decision.

B. CONCLUSION

Based on the foregoing argument, this court should deny petitioner's Motion to Strike a portion of the Supplemental Brief of Respondent.

Respectfully submitted this 10th day of May, 2010.

Richard Greene
Richard Greene
Assistant City Attorney
WSBA #13496

⁷ *Seattle v. May*, 151 Wn. App. 694, 698 n. 9, 213 P.3d 945 (2009), *review granted*, 168 Wn.2d 1006 (2010)

⁸ See RAP 13.7(c)(2) (supplemental brief limited to 20 pages).